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BROOKLYN CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
COREY HERB,

Plaintiff,

- against -

SMITH,

Defendant.

-----X
ROSLYNN R. MAUSKOPF, United States District Judge.

MEMORANDUM AND ORDER
18-CV-709 (RRM)

Petitioner Corey Herb, currently incarcerated at Shawangunk Correctional Facility, filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his June 22, 2011 conviction for manslaughter. Herb's request to proceed *in forma pauperis* is granted. As set forth below, the Court cannot consider the instant petition and transfers it to the United States Court of Appeals for the Second Circuit.

Herb has previously challenged this conviction by filing a petition for a writ of habeas corpus in this court on July 17, 2014. *See Herb v. Smith*, No. 14-CV-4405 (NGG). By Order dated April 25, 2017, the court denied the petition. By Mandate issued February 2, 2018, the Second Circuit dismissed Herb's appeal.

The Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications." *Torres v. Senkowski*, 316 F.3d 147, 151 (2d Cir. 2003); 28 U.S.C. § 2244(b)(3)(A). Therefore, Herb must move in the United States Court of Appeals for the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. *Torres*, 316

F.3d at 151–52 (citing *Liriano v. United States*, 95 F.3d 119 (2d Cir. 1996) (*per curiam*)). This Order closes this case. If the Circuit authorizes Herb to proceed in this matter, he shall move to reopen under this docket number.

SO ORDERED.

Dated: Brooklyn, New York

April 3, 2018

/S/ Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge